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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/380,208 11/08/99 SIMMONS

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EXAMINER

QM12/1030

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ART. UNIT PAPER NUMBER

3761
DATE MAILED:

10/30/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

Office Action Summary

Application No.

09/380,208

Applicant(s)

SIMMONS ET AL.

Examiner

Michele M. Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 November 1999.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 November 1999 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6-8. 6) ☐ Other:

DETAILED ACTION

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: Reference characters "6", "8" and "11" are not mentioned in the description. Correction is required.

Specification

This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Content of Specification

- (a) Title of the Invention: See 37 CFR 1.72(a). The title of the invention should be placed at the top of the first page of the specification. It should be brief but technically accurate and descriptive, preferably from two to seven words.
- (b) Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.
- (c) Statement Regarding Federally Sponsored Research and Development: See MPEP § 310.
- (d) Reference to a "Microfiche Appendix": See 37CFR 1.96(c) and MPEP § 608.05. The total number of microfiche and the total number frames should be specified.
- (e) Background of the Invention: The specification should set forth the Background of the Invention in two parts:

- (1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."
 - (2) Description of the Related Art: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art."
- (f) Brief Summary of the Invention: A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.
- (g) Brief Description of the Several Views of the Drawing(s): A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.
- (h) Detailed Description of the Invention: A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. This item may also be titled "Best Mode for Carrying Out the Invention." Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.

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- (i) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet. (37 CFR 1.52(b)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps.
- (j) Abstract of the Disclosure: A brief narrative of the disclosure as a whole in a single paragraph of 250 words or less on a separate sheet following the claims.
- (k) Drawings: See 37 CFR 1.81, 1.83-1.85, and MPEP § 608.02.
- (l) Sequence Listing: See 37 CFR 1.821-1.825.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of 37 CFR 1.71(a)-(c):

- (a) The specification must include a written description of the invention or discovery and of the manner and process of making and using the same, and is required to be in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which the invention or discovery appertains, or with which it is most nearly connected, to make and use the same.
- (b) The specification must set forth the precise invention for which a patent is solicited, in such manner as to distinguish it from other inventions and from what is old. It must describe completely a specific embodiment of the process, machine, manufacture, composition of matter or improvement invented, and must explain the mode of operation or principle whenever applicable. The best mode contemplated by the inventor of carrying out his invention must be set forth.
- (c) In the case of an improvement, the specification must particularly point out the part or parts of the process, machine, manufacture, or composition of matter to which the improvement relates, and the description should be confined to the specific improvement and to such parts as necessarily cooperate with it or as may be necessary to a complete understanding or description of it.

The specification is objected to under 37 CFR 1.71 because the applicant has failed to provide a written description of the invention in full, clear, concise and exact terms as to enable any person skilled in the art to make and/or use the invention.

Among other things, for example, how is the absorbent article modified or treated in such a way to cause the absolute value of $\Delta P = 2\gamma \cos\theta m/r$ to increase?

The applicant states on page 1 of the specification that the invention relates to an upper liquid-permeable sheet which lies proximal to the wearer in use (lines 11 – 12). Later, the applicant states on page 3 of the specification that absorbent articles including a liquid impermeable sheet that is intended to lie proximal to the wearer in use (lines 5 – 6) are also available. It is unclear if the structure on page 3 is cited as prior art or as a part of the claimed invention.

The applicant also states on pages 9 – 10 of the specification that the proportion of circumference of each material must be weighted so as to provide a mean value of $\cos\theta$. Later, the applicant states that the materials comprising the walls of the pores include a hydrophilic material and skin. It is unclear how the circumference of skin can be measured. Likewise, it is unclear how the skin of a wearer can comprise the wall of a pore.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: claim 29 discloses a free elastic scaling edge. The subject matter is not supported by the specification.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 15 – 42 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The applicant claims a method for increasing the absolute value of $\Delta P = 2\gamma \cos\theta m/r$ to increase, but the disclosure would not allow one of ordinary skill in the art to be able to make and/or use the invention. Additionally the formula $\Delta P = 2\gamma \cos\theta m/r$ is unclear because the applicant provides no method of calculation (i.e., is the formula calculated as $\Delta P = 2\gamma \cos(\theta m/r)$ or $\Delta P = 2\gamma (\cos\theta m)/r$, etc.) Likewise, the applicant should remain consistent with claim terminology (i.e., the absorbent article should be referred to as such; not the absorbent article in some cases and the article in other cases) in order to enhance the clarity of the claims.

Claims 16 – 28 are directed to limitations causing various values to increase or decrease, the applicant has failed to set forth how the absorbent article is initially treated to modify the value, let alone provide a reasonable means for one of skill in the art to increase or decrease the end result.

Likewise, the applicant at least one scaling edge in claim 29, this claim terminology is unclear and is not supported by the specification. In addition, the applicant claims that the absolute value of $\Delta P = 2\gamma \cos\theta m/r$ lies above the line $y=kx+m$ but is unclear whether this limitation causes the value to increase? Or is the value increased by some other means?

Claims 15 – 42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 15, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim 15 recites the following limitations:

- "the wearer" in lines 4, 6, 12, 14, 16 – 17,
- "the center line" in lines 7 – 8, 21
- "the wearer's body" in line 15
- "the anus" in line 16
- "the urethra orifice" in line 16
- "the skin" in line 19
- "the absolute value" in line 23
- "the surface tension" in line 24
- "the liquid" in lines 25, 29
- "the radius" in line 25
- "the largest circle" in line 26
- "the wearer's skin" in line 27
- "the given available elongation" in lines 27 – 28
- "the weighted mean value" in lines 28 – 29
- "the wetting angle" in line 29

- "the material" in line 30
- "the pore walls" in line 30
- "the different materials" in lines 30 – 31
- "the walls" in line 31
- "this largest pore" in line 31

There is insufficient antecedent basis for these limitations in the claim.

Claims 23 – 24 recite the limitation "said pore radius" in line 2 of each claim.

There is insufficient antecedent basis for this limitation in the claims.

Claim 25 recites the limitation "the absolute value" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 26 recites the following limitations:

- "the liquid" in lines 3 and 4
- "the barrier material" in line 3
- "the skin of the wearer" in lines 4 – 5
- "the skin" in line 6

There is insufficient antecedent basis for these limitations in the claim.

Claim 27 recites the limitation "the absolute value" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 28 recites the limitation "the absolute value" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 29 recites the following limitations:

- "the wearer" in lines 3, 4 – 5, 10 – 11, 12 and 15
- "the center line" in lines 6 and 18
- "the wearer's body" in line 13
- "the anus" in line 14
- "the urethra orifice" in line 15
- "the absolute value" in lines 18 – 19
- "the line" in line 19
- "the available elongation" in line 20
- "the value" in line 20
- "the range" in line 21
- "the major part" in lines 21 – 22
- "the surface tension" in line 23
- "the liquid" in lines 23 and 28
- "the radius" in line 24
- "the largest circle" in line 24
- "the skin of the wearer" in line 26
- "the weighted mean value" in line 27
- "the wetting angle" in line 28
- "the material" in line 28
- "the pore walls" in line 29
- "the different materials" in lines 29 – 30

- "the walls" in line 30
- "this largest pore" in line 30

There is insufficient antecedent basis for these limitations in the claim.

Claim 35 recites the following limitations:

- "said free sealing edge" in lines 1 – 2
- "the liquid" in lines 3 and 4
- "the edge material" in line 3
- "the skin of the wearer" in line 5
- "the skin" in lines 6 and 7

There is insufficient antecedent basis for these limitations in the claim.

Claim 36 recites the limitation "said free sealing edge" in lines 1 – 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 37 recites the limitation "said free sealing edge" in line 2, and "the available elongation or stretch" in lines 3 – 4. There is insufficient antecedent basis for these limitations in the claim.

Claims 38 – 39 recite the limitation "the pore radius" in lines 1 – 2 of each claim. There is insufficient antecedent basis for this limitation in the claims.

Claim 40 recites the limitation "said free sealing edge" in lines 1 – 2. There is insufficient antecedent basis for this limitation in the claim.

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Claim 41 recites the following limitations:

- "said absolute value" in lines 1 – 2
- "the line" in line 2
- "the major part" in line 3

There is insufficient antecedent basis for these limitations in the claim.

Claim 42 recites the limitation "the range" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 15 42, as best understood by the examiner, are rejected under 35 U.S.C. 102(e) as being anticipated by Schulte et al. (US 6,156,024).

With reference to claims 29 – 42, Schulte et al. (hereinafter "Schulte") discloses a method of achieving in an absorbent article and an absorbent article itself that includes an absorbent body disposed between a liquid-impermeable bottom sheet and a liquid-impermeable or liquid-permeable upper sheet and at least one longitudinally extending liquid barrier on each side of the center line of the upper sheet, made essentially of liquid-impervious material and fastened along or adjacent to a respective longitudinally extending side extremity of the article and including a free elastic edge intended to be

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stretched against the wearer a set forth in col. 5, line 7 to col. 12, line 52 and in figures 1, 3 and 4.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele M. Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday thru Friday, 7:00am - 3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John G. Weiss can be reached on 703-308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Michele Kidwell

Michele Kidwell
October 25, 2001

[Signature]